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BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR

Filed Oct. 14, 1902.

In the Supreme Court of the United States

OCTOBER TERM, 1902.

JAMES H. EASTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

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CHARLES W. MULLAN, ATTORNEY-GENERAL OF IOWA,
For Defendant in Error.

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For Defendant in Error,

BERNARD MURPHY, STATE PRINTER, DES MOINES, IOWA.

STATEMENT OF THE CASE.

The plaintiff in error was indicted by the grand jury of Winneshiek county in the state of Iowa on the first day of June, 1898, under sections 1884 and 1885 of the Code, for the offense of receiving, as president of the First National Bank of Decorah, Iowa, a deposit of one hundred dollars in money in the bank, at a time when the same was insolvent, in violation of the statute of Iowa.

The indictment is correctly set forth upon pages 1 and 2 of the transcript of the record, and, as its sufficiency is not in question, it is not necessary that it be here set out again.

The sections of the statute under which the indictment was found are as follows:

"Sec. 1884. No bank, banking house, exchange broker, deposit office, firm, company, corporation or person engaged in the banking, brokerage, exchange or deposit business, shall, when insolvent, accept or receive on deposit, with or without interest, any money, bank bills or notes, United States treasury notes or currency, or other notes, bills, checks or drafts, or renew any certificate of deposit.

"Sec. 1885. If any such bank, banking house, exchange broker, deposit office, firm, company, corporation or person shall receive or accept on deposit any such deposits, as aforesaid, when insolvent, any owner, officer, director, cashier, manager, member or person knowing of such insolvency, who shall knowingly receive or accept, be accessory, or permit, or connive at receiving or accepting on deposit therein, or thereby, any such deposits, or renew any certificate of deposit, as aforesaid, shall be guilty of a felony, and, upon conviction, shall be punished by a fine not exceeding ten thousand dollars, or by imprisonment in the penitentiary for a term of not more than ten years, or by imprisonment in the county jail not more than one year, or by both fine and imprisonment."

This statute was enacted by the Eighteenth General Assembly of Iowa, and became a law of the state on the third day of April, 1880. It was incorporated in the present Code without change, and was in force at the time when the offense charged in the indictment was committed.

A motion was made by the plaintiff in error to quash the indictment upon the grounds stated a length upon pages 2 and

3 of the transcript. The motion was overruled by the judge of the district court. A demurrer by the plaintiff in error to the indictment was then filed, the grounds of which are set forth at length upon pages 3 and 4 of the transcript. The demurrer was also overruled by the district court.

It is not necessary in presenting this case to do more than refer to the grounds of such motion and demurrer, as it is conceded that all proper objections were made to the indictment and procedure thereunder in the state court.

A change of venue of the cause was obtained from Winneshiek to Fayette county, and it was there tried by a jury in the district court of Iowa. The plaintiff in error was found guilty as charged in the indictment. He was sentenced to imprisonment in the penitentiary of the state for the term of five years. He appealed from the judgment and sentence of the district court to the supreme court of Iowa, and that court, on the twelfth day of April, 1901, affirmed the judgment of the district court. He then sued out a writ of error directed to the supreme court of Iowa, and the cause is now before this court to be heard upon such writ.

No evidence was offered in behalf of the plaintiff in error upon the trial in the district court, and the undisputed evidence discloses the following facts:

First. That the plaintiff in error was on the twenty-first day of August, 1896, president of the First National Bank of Decorah, which was located at the town of Decorah, in Winneshiek county, state of Iowa.

Second. That said bank held a certificate from Hugh McCollough, former comptroller of currency of the United States, issued on the sixth day of August, 1864, authorizing it to commence the business of banking under the act of congress entitled, "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864.

Third. That in 1883 the bank complied with the provisions of the act of congress enabling national banking associations to extend their corporate existence, and on the twenty-fourth day of February, 1883, the then comptroller of currency, John J.

Knox, issued and delivered to said bank a certificate showing that it had complied with such act of congress.

Fourth. That on the twenty-first day of August, 1896, one John French deposited in said First National Bank of Decorah, one hundred dollars lawful money of the United States, and received a certificate of deposit therefor, bearing interest at the rate of four per cent. per annum, payable to the order of himself.

Fifth. That the money so deposited by John French was by him delivered to, and received by, the plaintiff in error, as president of the First National Bank of Decorah, and as such officer he signed the certificate of deposit for and in behalf of the bank.

Sixth. That at the time the said French deposited the said sum of one hundred dollars in the First National Bank of Decorah, and at the time the same was received by the said James H. Easton, plaintiff in error, as president of such bank, the bank was and for more than two years prior thereto had been insolvent.

Seventh. That at the time the said French deposited the said sum of one hundred dollars in the First National Bank of Decorah, and at the time the plaintiff in error received and accepted such deposit, as president of said bank, the plaintiff in error knew that the said First National Bank of Decorah was then, and for more two years prior thereto had been, insolvent.

Eighth. That the plaintiff in error knowingly received and accepted the said deposit, of one hundred dollars, from the said French, as a deposit in the First National Bank of Decorah, with full knowledge that the said bank was then insolvent.

BRIEF AND ARGUMENT.

Eight errors are specifically assigned, but only two principal questions are presented thereby for determination by this court:

First. Was it the intention of the legislature of Iowa in enacting the law under which the indictment is found, that such law should apply to national banks?

Second. If the statute does apply to national banks as well as to banks incorporated under the state laws and individuals conducting the business of private banking in the state, is it

valid in so far as it applies to national banks, their officers and agents, conducting business in the state under the laws of congress?

Growing out of the second question, as stated, three other questions arise which may be properly termed subdivisions thereof, and which, for the sake of perspicuity, will be discussed as separate divisions of the argument, viz.:

Third. Has the federal government by act of congress intervened and occupied this field of legislation to the exclusion of the power of the state to legislate upon the subject?

Fourth. Is the enactment of the statute a proper exercise of the police power of the state?

Fifth. Does the statute unjustly discriminate against banks and their officers and agents and deny them equal protection under the laws of the state?

I.

Was it the intention of the legislature of Iowa, in enacting the law under which the indictment is found, that such law should apply to national banks?

The contention of the plaintiff in error is that such was not the intention of the legislature; while the defendant in error contends, that the act of the legislature of Iowa was intended to apply alike, to all banks and banking houses transacting business within the state.

The supreme court of the state of Iowa has directly held, in two cases which were presented to it, that this statute is applicable to the officers of national banks:

State of Iowa v. William Fields, 98 Iowa, 748.
State v. Easton, 85 N. W. Rep., 795.

In *State v. Fields* it is said:

"There are really but two questions presented for our consideration. One is that the statute under which the indictment was found is not applicable to officers of national banks. There is nothing in the act authorizing the conclusion that any banking institution is excluded from its operation. On the contrary, by its language it includes all banks, whether organized under the laws of the state or the acts of congress."

In *State v. Easton* it is said:

"We are in no doubt but that the legislative intent is that said sections shall apply to all persons, corporations and associations receiving deposits of money."

It is a familiar rule of law that the construction of a state statute, by the highest court of the state in which it is enacted, will be followed by the federal courts.

Bucher v. Cheshire R. R. Co., 125 U. S., 582.
Bacon v. Northwestern Life Ins. Co., 131 U. S., 264.
Ankeny v. Clark, 148 U. S., 354.
Adams Express Co. v. Ohio, 165 U. S., 219.

The statute under consideration is no exception to the rule. The highest court of the state having held, that it was the intention of the legislature that it should apply to the officers of national banks, as well as those of banking institutions organized under the laws of the state, such construction will be followed by this court.

Independent of this rule, the history of the enactment of the statute conclusively shows, that it was the intention of the legislature that it should apply to the officers of national banks.

It was enacted as chapter 153 of the laws of the Eighteenth General Assembly. Its provisions are general, and as sweeping as language can make them.

It provides:

"That no bank, banking house, exchange broker, deposit office, firm, company, corporation or person engaged in banking, brokerage, exchange or deposit business, shall, when insolvent, accept or receive on deposit," etc.

There is nothing in the language of the act which authorizes the conclusion that the officers of national banks are excluded from its operation. The statute as enacted was not amendatory to any existing statute, and did not depend upon any other for its construction and application. It was an independent act of the legislature and must be held to apply to all banks and bank officers, which come within the language of its provisions.

In the compilation of the present Code of Iowa, this statute was embodied in chapter 12 of title IX, many of the provisions of which are not applicable to national banks and their officers.

This fact, however, in nowise changes the rule of interpretation. It had been held to apply to the officers of national banks before it was made a part of chapter 12 of title IX of the Code, and it must of course be conclusively presumed that the legislators, in making this statute a part of chapter 12, did so with full knowledge of the construction which had been placed upon it by the supreme court of the state.

It is true the supreme court of Kansas, in the case of *State v. Menche*, 56 Kan., 77, held that a statute of that state, in some respects similar to the Iowa statute, was not intended by the Kansas legislature to apply to national banks, and *Commonwealth v. Ketner*, 92 Pa. St., 372, and *Allen v. Carter*, 119, Pa. St., 192, are cited by counsel as holding the same doctrine.

An examination of the Pennsylvania cases will, however, clearly disclose that the decisions of that court rest upon an entirely distinct principle; that is, that congress had already defined and provided adequate punishment for the offense of embezzlement by officers of national banks, and had thereby occupied that specific field of legislation. No reason existed therefore why the state, if it had the power, should legislate upon the subject.

No matter how highly we may regard the opinion of the supreme court of Kansas, it certainly cannot be claimed that its decision, in the case of *State v. Menche*, is authority in the case at bar. That court has held that the legislature of Kansas did not intend, that its statute against fraudulent banking should apply to national banks. Such holding is the law of the state of Kansas.

The supreme court of the state of Iowa held in the *State v. Fields*, and reaffirmed its decision in the case at bar, that the statute prohibiting fraudulent banking, was intended, by the Iowa legislature, to apply to the officers of national banks. Such holding is the law of Iowa, and, under the authorities cited, will control the construction of the Iowa statute by the federal courts.

We are therefore fully justified in saying, upon authority, principle, and the history of the legislative act, that the statute in question, must be held to apply to the officers of national banks,

as well as to banks organized under the laws of the state and to private corporations doing a banking business within this state.

We now reach the vital question involved in this case.

II.

Is the statute of the state of Iowa valid in so far as it applies to national banks, their officers and agents, conducting business in the state under the laws of congress?

It is the contention of the defendant in error, that the statute is valid as applied to national banks, their officers and agents; that the legislature of the state had power to enact it, and that the courts of the state have power to enforce it. That it is in the nature of a police regulation, having for its object the protection of the public from fraud.

The claim of the plaintiff in error is, that the authority given a national bank, by act of congress, to receive deposits, withdraws from the state the power to make the receipt of a deposit by a national bank, its officer or agent, a criminal offense under the statutes of the state, when such bank is insolvent, and known by such officer or agent to be insolvent.

It is said by counsel:

"Where an act is authorized to be done by a valid law of the United States, such act is thereby withdrawn from the operation of the criminal laws of the state; that such a law excludes any by the state upon the subject unless expressly permitted by the law of congress; and that the performance of such an act in pursuance of and as authorized by such law cannot be punished by the state as an offense against its laws."

The contention of the plaintiff in error may be stated as follows:

A state cannot punish an act which is authorized by a valid act of congress.

The receipt of deposits by the officers and agents of an insolvent national bank, known by them to be insolvent, is authorized by a valid law of congress.

Therefore a state cannot punish the officers and agents of a national bank for receiving deposits therein when such bank is insolvent and by them known to be insolvent.

The entire argument, of the plaintiff in error, upon this branch of the case, rests upon this proposition. If either of the premises upon which the conclusion is predicated is false, the conclusion must also be false.

It is assumed that the officers and agents of a national bank which is insolvent and known to be insolvent, are authorized by a valid law of congress to receive deposits in such bank.

This assumption is one of the premises upon which the argument of counsel is based. If it is false, then the entire structure resting upon it must fall.

To determine its truth or falsity, let us briefly inquire what a national bank is, and what its rights and duties are under the laws of congress.

Chapters 1 and 2 of title LXII of the Revised Statutes provide for the organization and commencement of business of national banking associations. Chapter 3 of the same title regulates the conduct of the business of the bank, and chapter 4 provides for dissolution, receivership, etc.

Upon complying with the provisions of chapter 1, a national banking association becomes a body corporate, and a certificate is issued to it by the comptroller of currency, under the provisions of sections 5168 and 5169 of the Revised Statutes. The form of the certificate approved by the treasury department is as follows:

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, D. C., ...

WHEREAS, by satisfactory evidence presented to the undersigned, it has been made to appear that the ... . in the village of....., in..... county, ..., has been duly organized under and according to the requirements of an act of Congress entitled, "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, and has complied with all the provisions of said act required to be complied with before commencing the business of banking under said act.

Now, therefore, I, ..., Comptroller of the Currency, do hereby certify that.....of ..... county, in said state, is authorized to commence the business of banking under the act aforesaid.

In testimony whereof, witness my hand and seal of office this ..... day of ....., ...

(SEAL) ....
Comptroller of the Currency.

When a national banking association has complied with the provisions of chapters 1 and 2 of title LXII of the Revised Statutes, and received from the comptroller of the currency the certificate of its organization, it is then entitled to transact a legitimate banking business at the place where the bank is located, under the authority of the laws of congress.

No certificate of the comptroller of the currency authorizing a national banking association to commence business, would be issued to an insolvent bank. Such certificate is issued to the bank because of its solvency and ability to carry on a legitimate banking business. The authority thereby conferred, to transact the business of banking, is based upon the fact that the bank is solvent. Whenever it becomes insolvent, its authority to continue business under such certificate must necessarily cease.

The fact that an insolvent bank holds the comptroller's certificate, authorizing it to transact a legitimate banking business, which was properly issued at the time the bank opened its doors, cannot and does not authorize it to continue business and to receive deposits a single instant after it becomes insolvent.

This proposition is based upon a well recognized and sound principle of law, which is, that the receipt of a deposit of money, by an insolvent bank, is a fraud. And no act of congress, or certificate of the comptroller of the currency, can authorize or legalize the commission of a fraud.

The position which a banker occupies in the business world is aptly defined in the case of *Meadowcraft v. The People*, 163, Ill., 65, where it is said:

"A banker is a dealer in capital—an intermediate party between the borrower and the lender—who borrows from one party and lends to another; and the business of banking is, among other things, the establishment of a common fund for lending money. And, as said by the supreme court of Wisconsin, in *Baker v. State*, 54 Wis., 268, a bank implies capital, and capital invites confidence. A man holding himself out as a banker thereby gives public proclamation that he has money, and property readily convertible into money, in his possession and subject to his control, and for that reason he may be safely

trusted; and his business not only affects himself as a banker, but every person who deals with him as such."

In *St. Louis, &c., R. Co. v. Johnson*, 133 U. S., 566, Mr. Chief Justice Fuller adopts the following language from the *Anonymous Case*, 67 N. Y., 598, as the opinion of this court:

"In the case of bankers, where greater confidence is asked and reposed, and where dishonest dealings may cause widespread disaster, a more rigid responsibility for good faith and honest dealing will be enforced than in the case of merchants and other traders;" and that "a banker who is, to his own knowledge, hopelessly insolvent, cannot honestly continue his business and receive the money of his customers; and although having no actual intent to cheat and defraud a particular customer, he will be held to have intended the inevitable consequences of his act, *i. e.*, to cheat and defraud all persons whose money he received, and whom he fails to pay before he is compelled to stop business."

In *Craigie v. Hadley*, 99 N. Y., 131, it was held, that it was a gross fraud, on the part of a bank, to permit a customer to make a deposit therein, when such bank was insolvent, and known by its officers to be insolvent.

The principle laid down in the New York cases has been fully recognized by this court in *St. Louis Ry. Co. v. Johnson*, *supra*.

Misrepresentation may consist as much in the concealment of what is true, where the duty of disclosure exists, as in the assertion of what is false. If one conceals a fact, material to a transaction, which it is his duty to disclose, knowing that the other party acts on the presumption that no such fact exists, it is as much a fraud as if the existence of such fact were expressly denied, or the reverse of it expressly stated.

The keeping of the bank open, and the conducting of its business in the usual manner by the plaintiff in error, constituted a continuing representation that it was solvent, upon which the public had the right to rely. If it was insolvent, and known to be insolvent by the officers who were charged with its management, the concealment of that fact from a person about to make a deposit would constitute a fraud.

The N. Y. Breweries Co. v. Higgins, 79 Hun., 250.

Wasson v. Hawkins, 59 Fed. Rep., 233.

In *Trust & Savings Bank v. Mfg. Co.*, 150 Ill., 340, it is said:

"The fraud alleged consists of the act of Shaffer & Co. as bankers in receiving the check on deposit after they had become insolvent, and with knowledge of their insolvency and their impending failure, thereby occasioning the loss to the petitioner of the amount of the deposit. That such act, if proved, constituted a fraud upon the depositor cannot be doubted, * * *"

In *First National Bank v. Strauss*, 66 Miss., 479, (14 Am. St. Repts., 581) it is said:

"Gattman & Co. were at the time irretrievably insolvent, the bank had been really insolvent for years, and at the time of the deposit by the claimant one of its members had absconded; the concern was tottering to fall, and it is inconceivable that the managing partners who remained in charge were not informed of its hopeless condition. The interval is as broad in law as in morals that separates the condition of him who, though involved in financial straights, has a *bona fide* hope or expectation of retrieving his situation, and prosecutes his business for the honest purpose of so doing, from that of him who, financially destroyed, conceals his own ruin and recklessly and fraudulently plunders the unwary and trusting who may be drawn into his toils."

In the case at bar the bank had been hopelessly insolvent for years. Its insolvency was known, to plaintiff in error, during all of that time. It was tottering to a fall; and yet its doors were kept open, its true condition was fraudulently concealed from depositors, and the plaintiff in error dishonestly took advantage of a credit induced by apparent prosperity, to obtain money from his depositors which he knew he never could repay. Such a transaction is not only contrary to law, but is repugnant to every principle of honesty and morality by which the commercial transactions of the world are governed.

Yet this is the character of business, and the kind of a transaction which is claimed, by the plaintiff in error, to be authorized by an act of congress.

In *Plumley v. Massachusetts*, 155 U. S., 461, it is said by Mr. Justice Harlan:

"The constitution of the United States does not secure to any one the privilege of defrauding the public."

It can be said, with equal force, that the act of congress which permits the organization of national banks does not secure to those associations, or to their officers or agents, the privilege of defrauding the public. Nor does the certificate of the comptroller of currency, which authorized a national bank to com-

mence business, confer upon such bank, or its officers, the right to commit a fraud upon those whom it induces to make deposits in the bank.

It is urged that national banks, organized under the acts of congress, are instruments designed to aid the government in an important branch of the public service, the object of which was to establish a system of national banking institutions in order to provide a uniform and secure currency for the people, and facilitate the operation of the laws of the United States; that they derive their power to transact business wholly from the congress of the United States, and are not dependent upon the statute of any state for the right of conducting and carrying on their business; that congress has, by express enactment, undertaken to regulate the conduct of the business of national banks, and has made the comptroller of the currency a supervisory officer, with visitorial powers, to examine and ascertain their condition, and to determine whether they shall continue business, and when they shall receive deposits; that in the exercise of its powers congress has undertaken, by appropriate legislation, to regulate and control the conduct of the business of these banks; that by act of congress the will of the nation has intervened; and that the will of the nation, so exercised by act of congress, is exclusive, and the power or authority of the state, whatever it may be, must retire, and lie in abeyance until the proper occasion for its exercise shall recur.

This contention, of the plaintiff in error, is based upon the principles announced in *McCullough v. Maryland*, 4 Wheat., 316, as applied to national banks in *Farmers, etc., Nat. Bank v. Deering*, 91 U. S., 29, in which it is stated as follows:

"National banks organized under the act are instruments designed to be used in aid of the government in the administration of an important branch of the public service. They are means appropriate to that end. Of the degree of necessity which existed for creating them congress is the sole judge. Being such means, brought into existence for this purpose, and intended to be so employed, the states can exercise no control over them, nor in anywise affect their operation, except in so far as congress may see proper to permit. Anything beyond this is 'an abuse because it is the usurpation of a power which a single state cannot give.' Against the national will 'the states

have no power by taxation, or otherwise, to retard, impede, burthen, or in any manner control, the operation of the constitutional laws enacted by congress to carry into execution the powers vested in the general government.' The power to create carries with it the power to preserve. The latter is corollary of the former.

"The principle announced in the authorities is indispensable to the efficiency, the independence, and indeed to the beneficial existence of the general government; otherwise it would be liable in the discharge of its most important trust to be annoyed and thwarted by the will or caprice of every state in the union. * * *

"Whenever the will of the nation intervenes exclusively in this class of cases the authority of the state retires and lies in abeyance until a proper occasion for its exercise shall recur."

With the soundness of this principle we have no contention, and in a case to which it is applicable no question as to its controlling power can be raised.

That it is wholly inapplicable to the case at bar appears to us clear.

The limit to which the doctrine of *McCullough v. Maryland*, and *Bank v. Deering*, may be carried as against the legislative power of the states over national banks is clearly defined in *Bank v. Commonwealth*, 9 Wallace, 361, and in subsequent decisions of this court affirming the doctrine therein enunciated.

In *Bank v. Commonwealth* Mr. Justice Miller, speaking for the court, said:

"But it is urged that the banks being instrumentalities of the federal government, by which some of its important operations are conducted, cannot be subjected to such state legislation. It is certainly true that the Bank of the United States and its capital were held to be exempt from state taxation on the ground here stated, and this principle, laid down in the case of *McCullough v. Maryland*, has been repeatedly affirmed by the court. But the doctrine has its foundation in the proposition that the right of taxation may be used in such cases as to destroy the instrumentalities by which the government proposes to effect its lawful purposes in the states, and it certainly cannot be maintained that banks or other corporations or instrumentalities of the government are to be wholly withdrawn from the operation of state legislation. The most important agents of the federal government are its officers, but no one will contend that when a man becomes an officer of the government he ceases to be subject to the laws of the state. The principle we are discussing has its limitation, a limitation growing out of the necessity on which the principle itself is founded. That limitation is, that the agencies of the federal government are only exempted from state legislation, so far as that legislation may interfere with, or

impair their efficiency in performing the functions by which they are designed to serve that government. Any other rule would convert a principle founded alone in the necessity of securing to the government of the United States the means of exercising its legitimate powers, into an unauthorized and unjustifiable invasion of the rights of the states. The salary of a federal officer may not be taxed; he may be exempted from any personal service which interferes with the discharge of his official duties, because those exemptions are essential to enable him to perform those duties. But he is subject to all the laws of the state which affect his family or social relations, or his property, and he is liable to punishment for crime, though that punishment be imprisonment or death. So of the banks. They are subject to the laws of the state, and are governed in their daily course of business far more by the laws of the state than of the nation. All their contracts are governed and construed by state laws. Their acquisition and transfer of property, their right to collect their debts, are all based on state law. It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional."

In *McClellan v. Chipman*, 164 U. S., 356, it is said:

"Two propositions have been long since settled by the decisions of this court:

"First. National banks 'are subject to the laws of the state, and are governed in their daily course of business far more by the laws of the state than of the nation. All their contracts are governed and construed by state laws. Their acquisition and transfer of property, their right to collect their debts, and their liability to be sued for debts, are all based on state law. It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional.' *National Bank v. Commonwealth*, 9 Wall., 362.

"Second. 'National banks are instrumentalities of the federal government created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt by a state to define their duties, or control the conduct of their affairs, is absolutely void, whenever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation, or impairs the efficiencies of these agencies of the federal government to discharge the duties for the performance of which they were created.' *Davis v. Elmira Savings Bank*, 161 U. S., 275, 283.

"These two propositions, which are distinct, yet harmonious, practically contain a rule and an exception, the rule being the operation of general state laws upon the dealings and contracts of national banks, the exception being the cessation of the operation of such laws whenever they expressly conflict with the laws of the United States or frustrate the purpose for which the national banks were created, or impair their efficiency to dis-

charge the duties imposed upon them by the law of the United States."

In *Waite v. Dowley*, 94 U. S., 533, it is said:

"We have more than once held in this court that the national banks organized under the acts of congress are subject to state legislation, except where such legislation is in conflict with some act of congress, or where it tends to impair or destroy the utility of such banks, as agents or instrumentalities of the United States, or interferes with the purpose of their creation."

Does the statute of Iowa, which makes the receipt of a deposit by an insolvent national bank a crime, interfere with, impede, impair, or destroy the efficiency and utility of such bank in the performance of the functions by which it was designed to serve the government?

If it does not, then the acts of its officers, in receiving a deposit when the bank is insolvent, and known by them to be insolvent, is a proper subject for state legislation under the principle laid down by Mr. Justice Miller in *Bank v. Commonwealth*, and re-affirmed in the cases cited.

As we have shown, the receipt of a deposit by an insolvent bank, when its officers know it to be insolvent, is a fraud.

The statute of the state makes such fraud a crime.

Does a law, which only seeks to prevent the commission of a fraud, impair, impede, or destroy the efficiency and utility of a bank?

Can it be said that the object for which national banks were created by congress is to be attained by fraudulent means?

There can be but one answer to these questions.

A bank, which is an instrumentality of the federal government, cannot be made more efficient in the performance of the functions by which it was designed to serve that government, or of greater utility in aiding the government, in the administration of an important branch of the public service, by dishonesty and fraud.

No one will claim that officers of a national bank, should be guilty of perpetrating a fraud, in the performance of the functions by which the bank was designed to serve the government.

The doctrine contended for, by plaintiff in error, would put the federal government in a most ignominious position. Its logi-

cal conclusion is, that by an act of congress the federal government has authorized the perpetration of a fraud upon the people of a state, to further its ends and objects.

It is clear that no such position can be maintained. It is equally contrary to law and good morals.

The statute of the state does not, therefore, in anywise interfere with, impair, impede, or destroy the efficiency of a national bank in attaining the objects for which it was created. It does not conflict with, or impinge, any law of congress. It does not impede or delay, any of the powers of the United States government, in carrying out the purposes for which such banks were created.

The effect of the statute is, to require of the officers of all banks, within the state, a higher degree of diligence in the discharge of their duties. It gives to the general public greater confidence in the stability and solvency of national banks, and in the honesty and integrity of their managing officers. It enables them, better to accomplish the purposes and designs of the general government, and is an aid, rather than an impediment, to their utility and efficiency as agents and instrumentalities of the United States.

The act, therefore, cannot be held invalid upon the ground that it interferes with, impedes, or impairs the efficiency and utility of national banks as instrumentalities of the government.

In no case cited by counsel has this court announced a doctrine contrary to the principle for which we contend; and in no case decided by it has a principle of law been declared which is not in harmony with our position.

The language used in *Cook County National Bank v. United States*, 107 U. S., 445, and quoted in counsel's brief, was intended only to apply to a case, where a law-making power enacted a law which was repugnant to a former law, enacted by the same power. Under a familiar rule, the former law was held to yield to the latter, and, to the extent of the repugnancy, to be superseded by it.

What is said in that case as to a law embracing an entire subject and dealing with it in all of its phases, and thus withdraw the subject from the operation of a general law, was said

in reference to two repugnant statutes of the United States, and was not intended to cover, and does not determine, the question of the right of a state, to declare the fraudulent act of an officer of a national bank a crime, and to provide a punishment therefor.

A careful reading of this case will not disclose a single principle of law as therein enunciated, which is in conflict with the position we have taken upon this question.

The decision of this court in *Ohio v. Thomas*, 173 U. S., 276, was based strictly upon the principle that federal officers, who are discharging their duties in a state, and who are engaged in superintending the internal government and management of a federal institution, with the approval of congress, are not subject to the jurisdiction of the state in regard to those very matters of administration which are thus approved by federal authority.

Thomas was an officer of the federal government. He was engaged in superintending the internal government and management of a federal institution, under the lawful direction of its board of managers and with the approval of congress. What he did was strictly within his line of duty as such federal officer.

It is said, in that case, by Mr. Justice Peckham, speaking for the court:

"In asserting that this officer under such circumstances is exempt from the state law, the United States are not thereby claiming jurisdiction over this particular piece of land, in opposition to the language of the act of congress ceding back the jurisdiction the United States received from the state. The government is but claiming that its own officers, when discharging duties under federal authority pursuant to and by virtue of valid federal laws, are not subject to arrest or other liability under the laws of the state in which their duties are performed.

"The claim is made that neither the board of managers nor the governor of the home can, through their officers or by himself, violate the statute law of a state having jurisdiction, when the acts constituting the infringement are not necessary for the government and management of the home for the purpose for which it was incorporated, or authorized by any act of the United States.

"This claim might be conceded and still the conviction of the appellee would be invalid, because we find in this record the authority of the United States for the act of the governor. The statutes above referred to, when taken in connection with the

admitted facts, show an appropriation by congress for the purchase of oleomargarine as part of the regular rations of the inmates of the home. The act of the governor in serving it was authorized by congress and it was therefore legal, any act of the state to the contrary notwithstanding."

In the case *In re Neagle*, 135 U. S., 1, Neagle was a federal officer and charged with the special duty of protecting the person and life of one of the judges of this court. In the performance of that duty he shot and killed Terry. In doing so, he was acting under the authority of the law of the United States as an officer thereof, and in the performance of his duty as such officer. Under the facts in that case, this court held that Neagle was not liable to answer in the courts of California for the killing of Terry, for the reason that he was a federal officer acting under the law of the United States and in the performance of his duty as such officer, at the time of the act.

In the case *In re Waite*, 81 Fed. Rep., 363, the question involved is stated by Judge Shiras as follows:

"Broadly stated, it involves the proposition whether the operations of the government of the United States in matters within its sole control, and which operations of necessity must be carried forward by means of officers and agents duly appointed, can be interferred with by criminal proceedings instituted in the state courts, and based upon acts done by such officers or agents within the scope of the duties imposed upon them. By this it is not meant to assert that because a person is an officer or agent of the federal government he is thereby excepted out from the jurisdiction of the state or the binding force of its laws. The mere fact that when the acts by him done were done he was an officer of the United States, charged with certain duties to that government, will not afford him immunity from prosecution under the laws of the state, nor will the mere fact that he claims that the acts done were within the line of his official duty afford him protection, if the acts are such as to show that the claimed immunity is a mere subterfuge, and that under no fair consideration of his official duty could he have assumed that he was acting in his official capacity when the acts complained of were done by him. But when an officer of the United States is charged with the performance of certain duties under the laws of the United States, and in the general performance thereof he does acts which it is claimed are in excess of his proper duty, or which are violative of the rights of other citizens, the question is whether a prosecution therefor can be sustained in the state courts, when it is apparent that the institution and maintenance thereof may interfere with the enforcement of the laws of the United States, or with the operations of that government."

This question, as stated by the learned judge, involves two propositions:

First. To exempt the person, against whom the state law is sought to be enforced, from its jurisdiction he must be the duly appointed agent of the United States, charged with the performance of certain duties under the laws of the United States, and that in the performance of such duties he does an act which is claimed to be in violation of the state law.

Second. It must be apparent that the enforcement of the state law, against such officer or agent, for the performance of the act done in his official capacity and under the authority and laws of congress, will interfere with the enforcement of the laws of the United States, or with the operations of that government.

The conclusion of Mr. Justice Shiras is stated in these words:

"Therefore, when it was made to appear to the district court of Howard county that it was sought in the case before it to hold Edward F. Waite liable for a criminal violation of the statutes of the state for acts by him done as a special examiner of pensions appointed under the laws of the United States, when he was engaged in the performance of the duties imposed upon him as an officer or agent of the United States, then it was made to appear to that court that it had no jurisdiction to further proceed in the case or to further restrain the liberty of the defendant therein."

In the case at bar the plaintiff in error was the president of a corporation organized for private pecuniary profit under the laws of congress. He was elected to his office by the directors of the corporation. His election to the office of president of a private corporation, although such corporation was organized under the authority of congress, did not make him an officer or agent of the federal government, nor exempt him from the jurisdiction of the state or from the operation of its laws.

In receiving a deposit, in the bank, at a time when it was insolvent, and known by him to be insolvent, he was acting in his capacity as a citizen of the state of Iowa, and not as an officer of the federal government; nor was he performing any duty imposed upon him by law of congress.

The distinction between the facts in the case at bar, and those involved in *Ohio v. Thomas*, is clear and well defined. In one, a federal officer was discharging his duties under the authority

of the United States, pursuant to and by virtue of federal laws. In the other, a citizen of a state, who was not an officer or agent of the federal government, and who was not discharging any duty imposed upon him by a federal law, was perpetrating a fraud by receiving a deposit of money in an insolvent bank.

The distinction between the cases *In re Naegle* and *In re Waite* and the one at bar is equally clear and well defined. The conditions upon which the decisions in those cases rest, do not exist here. The plaintiff in error was not an officer or agent of the government. He was not performing an act under the authority of or pursuant to the laws of the United States. His prosecution under the state law for the perpetration of a fraud, committed against the laws of the state, cannot and does not interfere with the enforcement of the laws of the United States or the operations of that government.

No decision of this court goes beyond the principle announced in these cases, and it is unnecessary to occupy the time in a review of the other cases cited by counsel, and in showing the clear distinction which exists between the principles of law laid down therein and those which govern the case at bar.

The claim, of the plaintiff in error, that, because a national bank is lawfully incorporated under the laws of the United States, which prescribe the manner of conducting its business, of winding up its affairs, and the punishment for certain illegal acts of its officers, the entire property of the bank and all of the acts of its officers are thereby entirely removed from the jurisdiction of the state, is so far reaching, and so subversive of the elementary principles of our system of government, that it cannot be sustained. The doctrine contended for, if carried to its legitimate and logical conclusion, would deprive the state of its entire governmental powers.

If congress has power to establish national banks, and thereby withdraw the property and persons engaged in the management of the business of such banks, wholly from state control and taxation, the same implied power would permit congress to incorporate railways, and to withdraw the property thereof and all persons engaged in transacting the business of such railways,

from the control of the laws of the state. It would enable congress to incorporate manufacturing companies, for the purpose of supplying the army and navy with material requisite for their equipment. It would justify congress in incorporating great agricultural companies, for the purpose of purchasing lands and raising products thereon, to feed and maintain the army and navy of the United States.

All of the property of such companies, and all of the persons engaged in carrying on their business, would, upon the theory of counsel, be withdrawn from the operation of the police laws of the state and from its taxing power. The entire state might be dominated and controlled by men in the employ of such corporations, who were not amenable to the state laws, and the larger part of all of the property within the state be withdrawn from taxation.

If the reasoning of counsel is sound, the property within the boundaries of the state might, by the means suggested, be withdrawn from state taxation to such an extent that the state government must fall for want of adequate revenue. All of the powers reserved to the state could be absorbed and supplanted by the general government.

That such a condition is not likely to occur does not weaken the force of the argument, as it is but the logical conclusion of the theory advanced.

The doctrine contended for by the learned counsel is contrary to the fundamental principles which underlie the foundation of our government. The states are original sovereign powers, and as such retain every sovereign right not delegated to the general government. They are the foundation upon which the federal government rests.

While it may be said that the existence of the federal government is not necessary to the existence of the states, it is clearly true that the existence of the states is absolutely necessary to the existence of the federal government, as at present constituted. The states disunited might continue to exist. Without the states in union there could be no such political body as the United States.

Lane County v. Oregon, 7 Wall., 76.

Any theory, therefore, which, in its logical conclusion, leads to the destruction of a state government, and of the sovereign right of that state to exercise control over the persons and property within its boundaries, equally tends to the destruction of the federal union.

No doctrine can, therefore, be recognized by this court as a sound principle of law, which takes from the state its sovereign rights and powers; as the destruction of such rights and powers is a menace to the existence of the national government.

In *Railroad Co. v. Peniston*, 18 Wall., 31, it is said:

"The states are, and they must ever be, co-existent with the national government. Neither may destroy the other. Hence the federal constitution must receive a practical construction. Its limitations and its implied prohibitions must not be extended so far as to destroy the necessary powers of the state, or prevent their efficient exercise."

Among the powers reserved by the state is the right to levy and collect a tax upon all property and persons within its jurisdiction, and to control its internal affairs by its police powers. While the right of the state to exercise these powers is not denied, it is contended that the general government may remove citizens and property within the territorial jurisdiction of the state from the operation of its laws, and leave neither property nor citizens upon which the laws of the state can operate.

The principle contended for carried to its logical conclusion would leave but the shadow of a form of state government, with neither vitality nor substance. While that shadow of a form of state government might exist, the state itself in vitality and power would be absolutely destroyed by the federal government; and the principle stated by Mr. Justice Strong, in *Railroad Co. v. Peniston*, "that the states are, and they must ever be, co-existent with the national government," would be completely overturned.

"The constitution in all its provisions looks to an indestructible union, composed of indestructible states."

Texas v. White, 7 Wall., 725.

III.

Has the federal government, by act of congress, intervened and occupied this field of legislation, to the exclusion of the power of the state to legislate upon the subject?

In *Gilman v. Philadelphia*, 3 Wall., 730, it is said by Mr. Justice Swayne:

"The states may exercise concurrent or independent power in all cases but three.

"1. Where the power is lodged exclusively in the federal constitution.

"2. Where it is given to the United States and prohibited to the states.

"3. Where, from the very nature and subjects of the power, it must necessarily be exercised by the national government exclusively."

It is clear that the power sought to be exercised by the state, in enacting the statute under which the indictment was found, does not fall within either of the first two classes.

Is the subject of the state legislation, and the power sought to be exercised by the state in enacting and enforcing such legislation, a power which, from the nature and subject thereof, must necessarily be exercised by the national government exclusively?

The statute affects all persons within its territorial jurisdiction who fall within the class named in its provisions. The act prohibited by it is one done within the territorial jurisdiction of the state, and by persons within its legislative jurisdiction. The nature and subject of the legislative power sought to be exercised falls within the powers of the state, rather than those of the national government.

If we concede the power of the federal government to step within the territorial jurisdiction of a state and declare the act of a citizen of the state, in receiving a deposit in an insolvent bank, to be a crime, it is certain that no attempt has ever been made by congress to do so. The United States government has never occupied that field of legislation.

The argument of council based upon the authority of *Prigg v. Pennsylvania*, 16 Pet., 539, falls far short of holding the doctrine contended for. In that case a law of Pennsylvania, making it a

criminal offense to take and remove from the state a fugitive slave, was held to be void because repugnant to a provision of the federal constitution upon that subject. The question of the federal government having taken possession of a field of legislation to the exclusion of a state, did not arise in the case, nor was such question passed upon by the court.

It is true that the supreme court of Michigan in *People v. Fonda*, 62 Mich., 401, held that because congress had, by the provisions of section 5209 of the revised statutes, made the embezzlement of the funds of a national bank by an agent or officer of such a bank a crime, such act of congress removed the subject from the power of the state legislature, and that an officer of a national bank, guilty of embezzling its funds, could not be punished under a statute of that state.

The decision of the Michigan court, however, stands practically alone upon this question, and as it seems to us, it fell into the error of assuming that embezzlement, larceny, forgery, falsification of records and other recognized crimes of that character when committed by officers of national banks, are exclusively within the jurisdiction of the federal courts, because they are punishable under the laws of congress.

The holding in the Michigan case is in direct conflict with the decisions of this court and those of several of the states.

In *Cross v. North Carolina*, 132 U. S., 139, it is said:

"The argument in behalf of plaintiffs in error fails to give effect to the established doctrine that the same act or series of acts may constitute an offense equally against the United States and the state subjecting the guilty party to punishment under the laws of each government. This doctrine is illustrated in *United States v. Marigold*, 9 How., 560-9; *Fox v. Ohio*, 5 How., 410-413; *Moore v. Illinois*, 14 How., 13-19 and *ex parte Siebold*, 100 U. S., 371-390; in the first of which cases it was said that 'the same act might, as to its character and tendencies, and the consequences it involved, constitute an offense against both the state and federal governments, and might draw to its commission the penalties denounced by either, as appropriate to its character in reference to each.' If it were competent for congress to give exclusive jurisdiction to the courts of the United States of the crime of falsely making or forging promissory notes, purporting to be executed by individuals, and made payable to or at a national bank, or of the crime of uttering or publishing as true any such falsely made or forged notes, it has not done so. Its legislation does not assume to restrict the authority,

which the states have always reserved, of punishing in their own tribunal the crime of forging promissory notes, and other commercial securities executed by private persons, and used for purposes of private business. The forgery of such an instrument is none the less injurious to the welfare of the people of a state because they happen to be made payable to or at banking associations which come into existence under the authority of the United States. The forgery may have been committed in order that the instrument forged might thereafter become the basis of false entries upon the books of the bank. But that circumstance cannot defeat the authority of the state, charged with the duty of protecting its own citizens, from punishing the forgery as, in itself, a distinct, separate offense, committed within its limits and against its laws."

In *Teal v. Felton*, 12 How., 284, this court sustained a judgment of the court of appeals of New York against a postmaster for refusing to deliver a newspaper under the instructions of the postmaster general. The court held that, notwithstanding the unauthorized instructions of his superior officer, he was liable in trover under the laws of New York. On page 292 this court quotes with approval the language of Mr. Justice Wright of the New York court, as follows:

"After citing the second section of the third article of the constitution, he adds, 'This is a mere grant of jurisdiction to the federal courts, and limits the extent of their power, but without words of exclusion or any attempt to oust the state courts of concurrent jurisdiction in any of the specified cases in which concurrent jurisdiction existed prior to the adoption of the constitution. The apparent object was not to curtail the powers of the state courts, but to define the limits of those granted to the federal judiciary.' We will add that the legislation of congress immediately after the constitution was carried into operation, confirms this conclusion of the learned judge."

In *Moore v. People*, 14 How., 13, Mr. Justice Grier said:

"Every citizen of the United States is also a citizen of a state or territory. He may be said to owe allegiance to two sovereigns, and may be liable to punishment for an infraction of the laws of either. The same act may be an offense or transgression of the laws of both. Thus, an assault upon the marshal of the United States, and hindering him in the execution of legal process, is a high offense against the United States, for which the perpetrator is liable to punishment; and the same act may also be a gross breach of the peace of the state, a riot, assault, or a murder, and subject the same person to a punishment, under the state laws, for a misdemeanor or felony."

In *Commonwealth v. Tenny*, 97 Mass., 50, it was held that a person converting the money or bonds belonging to a national

bank, being a clerk therein, was guilty of embezzlement under the state law.

In *Hoke v. The People*, 122 Ill., 511, it was held that the state court had jurisdiction to try and punish a person guilty of forging a draft purporting to have been drawn by a national bank, although such person was a clerk in the bank.

In *Commonwealth v. Luberg*, 94 Pa. St., 85, it was held that the teller in a national bank may be convicted in a state court upon an indictment charging him with fraudulently making false entries, reports and statements of the bank with intent to injure and defraud the bank. This case, which was decided after the case of *State v. Ketner*, 92 Pa. St., 372, cited by counsel, contains no reference to the latter case, and it appears to overrule the doctrine announced in the *Ketner* case.

The punishment of embezzlement, larceny, counterfeiting, and crimes of like character, if committed by officers of national banks, does not necessarily, because of the character of such acts, fall within the powers which must be exercised by the national government to the exclusion of the state. This is clearly a field of legislation within which the general government and the state may exercise concurrent power.

Congress has authorized the organization of national banks under its laws. It has regulated the conduct of their business. It has made embezzlement, wilful appropriation of money, the issuance, without authority, of certificates of deposits, orders or bills of exchange, and the falsification of its books and records, offenses under the federal statute.

It has never attempted to go beyond this field of legislation.

The power to punish an officer of a national bank for the commission of a fraud in receiving deposits when the bank is insolvent, and known by him to be insolvent, has been left by congress wholly to the states. It is a field of legislation which has not been entered or occupied by the federal government.

The act of receiving a deposit in an insolvent bank is a fraud, committed against the people of the state in which the bank is located. It is none the less injurious to their welfare because done by an officer of a national bank. It forms no part of the

legitimate and lawful business of the bank regulated by act of congress.

The power to punish such fraudulent act, therefore, falls within the powers which the states have always reserved; among which is the right of every state to punish in its own tribunals the perpetrator of a crime, committed against its own citizens, within its territorial and legislative jurisdiction.

The power to define and punish a fraud of this character does not from its nature fall within the powers which must necessarily be exercised by the national government exclusively, but, as we shall see, comes within the police powers which the state may at all times rightfully exercise.

IV.

Is the enactment of the statute a proper exercise of the police power of the state?

Mr. Cooley in his work on Constitutional Limitations (6th ed.), 704, says:

"The police of a state, in a comprehensive sense, embraces its whole system of internal regulation, by which the state seeks not only to preserve the public order and to prevent offenses against the state, but also to establish for the intercourse of citizens with citizens those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own so far as is reasonably consistent with a like enjoyment of rights by others."

Upon page 706 of the same work it is said:

"In the American constitutional system the power to establish the ordinary regulations of police has been left with the individual states, and it cannot be taken from them, either wholly or in part, and exercised under regulation of congress. Neither can the national government, through any of its departments or officers, assume any supervision of the police regulations of the states. All that the federal authority can do is to see that the states do not, under cover of this power, invade the sphere of national sovereignty, obstruct or impede the exercise of any authority which the constitution has confided to the nation, or deprive any citizen of rights guaranteed by the federal constitution."

These statements of the writer are fully supported by the decisions of this court:

United States v. De Witt, 9 Wall., 41.
License Cases, 5 How., 504.
Passenger Cases, 7 How., 283.
Slaughter House Cases, 16 Wall., 36.
Patterson v. Kentucky, 97 U. S., 503.

Nor can the police power of a state be alienated even by an express grant. It is a power and responsibility which legislatures cannot divest themselves of, if they would.

Thorp v. R. & B. R. R. Co., 27 Vt., 149.
Beer Co. v. Mass., 97 U. S., 33.
Stone v. Mississippi, 101 U. S., 814.

The fourteenth amendment to the federal constitution does not take from the states the police powers reserved at the time of the adoption of the constitution.

Slaughter House Cases, 16 Wall., 36.
Barbier v. Connolly, 113 U. S., 27.
Mugler v. Kansas, 123 U. S., 623.

In *United States v. Cruikshank*, 92 U. S., 555, it is said:

"The equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of these principles if within its power. That duty was originally assumed by the states; and it still remains there. The only obligation resting upon the United States is to see that the states do not deny the right. This the amendment (the fourteenth) guarantees, but no more. The power of the national government is limited to the enforcement of this guaranty."

In *State v. Noyes*, 47 Me., 189, it is said:

"With the legislature the maxim of law '*salus populi suprema rex*,' should not be disregarded. It is the great principle on which the statutes for the security of the people are based. It is the foundation of criminal law, in all governments of civilized countries, and of other laws conducive to the safety and consequent happiness of the people. This power has always been exercised, and its existence cannot be denied. How far the provisions of the legislature can extend, is always submitted to its discretion, provided its acts do not go beyond the great principle of securing the public safety; and its duty to provide for the public safety, within well defined limits and with discretion, is imperative. * * * All laws for the protection of lives, limbs, health and the quiet of the person, and for the security of all property within the state, fall within this general power of the government."

In *Lake View v. Rose Hill Cemetery*, 70 Ill., it is said:

"The police power of a state is co-extensive with self-protection, and is not inaptly termed, 'The law of overruling necessity.' It is that inherent plenary power in the state which enables it to prohibit all things hurtful to the welfare and comfort of society."

As has been shown in another division of this argument, the receipt of a deposit by an officer of an insolvent bank, when such bank is by him known to be insolvent, is a fraud. And it is not only the right of the state, but it is its duty to protect its citizens in the enjoyment of their property and against fraudulent deprivation thereof.

"Fraud is a trespass upon the rights of others, and may therefore always be punished."

Teidman's Limitations of Police Powers, 291.

It is argued by counsel for plaintiff in error, that the right of a bank to accept deposits is essential to enable it to continue business; that no bank can successfully conduct a banking business for any length of time and supply the demands of congress without such right, and the actual exercise thereof; that congress well understood this, and when it conferred upon national banks the authority to receive deposits to an unlimited amount it must have intended them to exercise the right untrammeled by any action of the state; that to deny to a bank the right to receive deposits is to deny it the right to continue business; that to impose conditions upon its right to receive deposits is to impose conditions upon its right to continue business.

The fallacy of this argument is in the assumption that an insolvent bank has a right to continue business, and that the statute of the state which makes it a crime for an insolvent bank to receive a deposit imposes a condition upon such right.

It is a well settled rule of law that an insolvent bank has no right to continue business or to receive deposits. When it becomes insolvent it is the duty of its officers to at once close its doors, decline deposits, and discontinue business.

Anonymous Case, 67 N. Y., 598.

Craigie v. Hadley, 99 N. Y., 133—52 Am. Rep., 9.

St. Louis, &c., R. Co. v. Johnson, 133 U. S., 566.

Am. Trust, &c., Bank v. Gueder, &c., Mfg. Co., 150 Ill., 336.

Meriden First Nat. Bank v. Straw, 56 Miss., 479—14 Am. St. Rep., 579.

The state law, therefore, which makes it a crime for an officer of a national bank to receive a deposit, under circumstances which amount to a fraud, does not deny to the bank any right which it has under the law of congress to receive deposits, nor does it deny to such bank any right which it has under such law to continue business. It imposes no conditions whatever upon the right of the bank to continue to transact a legitimate and lawful banking business.

It must be conceded that the state has the right to protect its citizens from fraud, whether perpetrated by an officer of a national bank, or by any other person within its territory; and when such officer goes beyond the rights which have been conferred upon him by law of congress, and performs an act which is a fraudulent trespass upon the rights of others, the power of the state to define and punish such fraudulent act is beyond question.

The fact that a state law, which seeks to punish fraudulent acts of this character, has the effect of closing the doors of an insolvent national bank, and thereby preventing a repetition of the fraud, is no argument against the exercise of the police power.

The doors of the bank are not closed, because the state has enacted a law which in any wise interfers with the transaction of its business as authorized by congress, or which impedes or impairs its efficiency as an instrumentality of the general government, but because the bank itself is insolvent and has no right to continue business.

Our position upon this question cannot be more cogently stated, than by quoting the language of the learned judge of the state court, in the case of the *State v. Fields*, 98 Iowa, 748:

"This statute is in the nature of a police regulation, having for its object the protection of the public from the fraudulent acts of bank officers. The mere fact that in violating the law of the state the defendant performed an act pertaining to his duty as an officer of the bank does not in any manner interfere with

the proper discharge of any duty he owes to any power, state or federal. Surely it was not intended by any act of congress that officers of a national bank should be clothed with the power to cheat and defraud its patrons. National banks are organized, and their business pursued for private gain, and we can conceive of no reason why the officers of such banks should be exempt from the penalties prescribed for fraudulent banking."

The supreme court of Mississippi, in a case precisely like the one at bar, reached the same conclusion as the Iowa court as to the validity of a statute of this character, after a thorough investigation of the questions involved.

State v. Bardwell, 72 Miss., 535.

V.

Does the statute unjustly discriminate against banks and their officers and agents, and deny them equal protection under the laws of the state?

It is urged that the statute is repugnant to the fourteenth amendment of the constitution of the United States, and for that reason void.

It is contended that the legislature of the state has no authority to say that a bank, or a person doing a banking business, shall not receive a deposit of money when insolvent, when such right is not denied to other insolvent persons, and that the law denies to persons conducting a banking business the right of private contract, when insolvent, that is not denied to others, and for that reason unjustly discriminates against banks and persons conducting a banking business, and deprives them of the equal protection of the laws.

What is said in another branch of this argument in reference to the character of the business transacted by banks, is equally applicable to the question under consideration, and may properly be restated here:

"A banker is a dealer in capital,—an intermediate party between the borrower and lender,—who borrows from one party and lends to another, and the business of banking is, among other things, the establishing of a common fund for lending money. And as is said by the supreme court of Wisconsin in *Baker v. State*, 54 Wis., 268, a bank implies capital, and capital invites confidence. A man holding himself out as a banker thereby gives public proclamation that he has money, and

property readily convertible into money, in his possession and subject to his control, and for that reason he may be safely trusted, and his business not only affects himself as a banker, but every person who deals with him as such."

Meadowcraft v. People, 163 Ill., 65.

"In the case of bankers, where greater confidence is asked and reposed, and where dishonest dealings may cause widespread disaster, a more rigid responsibility for good faith and honest dealings will be enforced than in the case of merchants and other traders."

The Anonymous Case, 67 N. Y., 598.

St. Louis, &c., R. Co. v. Johnson, 133 U. S., 566.

Banks and bank officers have always been considered proper subjects of legislation because of their intimate and confidential relations to the people. They deal exclusively in money and credits, and their entire business rests upon the confidence of the public in their honesty and integrity. The relation which they sustain to their patrons is very nearly that of a fiduciary character.

The subject of banks and bankers is a natural classification for legislative purposes, and if the law bears equally upon all persons who fall within the classification it is valid, and does not contravene the provisions of the fourteenth amendment.

It is said by Mr. Cooley in his work on Constitutional Limitations, 6th Ed., 479:

"Laws public in their objects may, unless express constitutional provision forbids, be either general or local in their application; they may embrace many subjects; any one of them may extend to all citizens or be confined to particular classes, as minors or married women, bankers or traders, and the like."

Citing:

Iowa R. R. Land Co. v. Soper, 39 Iowa, 112.

Matter of Goodell, 39 Wis., 232.

Commonwealth v. Hamilton Mfg. Co., 120 Mass., 383.

The same author further says:

"These discriminations are made constantly, and the fact that the laws are of local and special operation only is not supposed to render them obnoxious in principle. The legislature may also deem it desirable to prescribe rules for the several occupations and to establish distinctions in the rights, obligations, duties and capacities of citizens. The business of common carriers, for instance, or bankers, may require special statutory

regulation for the general benefit, * * * If the laws be otherwise unobjectionable all that can be required in these cases is that they be general in their application to the class or locality to which they apply; and they are then public in their character, and of their propriety and policy the legislature must judge."

Cooley on Constitutional Limitations, 6th Ed., 480–81.

Equal protection under the constitution of the United States of the right to contract is not denied whenever the law operates alike on all persons and property similarly situated; and legislation limited as to business or territory does not infringe upon the constitutional right of equal protection and right of contract, where all persons subject to it are treated alike under like circumstances and conditions.

Munn v. Ill., 94 U. S., 113.
Walston v. Neven, 123 U. S., 578.
Barbier v. Connolly, 113 U. S., 32.
Hayes v. Missouri, 120 U. S., 68.
Mo. Pac. R. Co. v. Mackey, 127 U. S., 205.
Minn. & St. L. R. Co. v. Herrick, 127 U. S., 210.
State v. Schemmer, 10 L. R. A., 135.
Vt. Loan & Trust Co. v. Whithed, 49 N. W. R., 318.
State v. Moore, 104 N. C., 714.
Ex parte Swan, 96 Mo., 44.

The statute under consideration does not go so far as to attempt to regulate the business of banks. It simply makes the fraudulent acts of persons within the state an offense which is punishable under the law. It is general and uniform because every person who is brought within the relations and circum stances specified is affected by the law. It operates alike upon all persons who fall within the class to which it is applicable. The class is a natural and not an arbitrary one. The law does not therefore infringe upon the constitutional right of equal protection or right of contract.

In conclusion it is most respectfully submitted:

That it is within the power of the state to enact the statute in question; that it is applicable to national banks, their officers

and agents, conducting business within the state; and that the judgment of the state court holding the statute valid, and the plaintiff in error amenable thereto, should be by this court affirmed.

CHARLES W. MULLAN,
Attorney-General of Iowa,
for Defendant in Error.